

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

v.

BOBBY LEE BUCKLER

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD72794
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 18, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Ronald E. Taylor, Judge

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Timothy Allan Blackwell, Jefferson City, MO, for **respondent**.

Craig Allan Johnston, Columbia, MO, for **appellant**.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

BOBBY LEE BUCKLER,

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No. WD72794

Buchanan County

Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Bobby Lee Buckler appeals his conviction of criminal nonsupport of a child. Buckler failed to make child-support payments to J.K. ("Mother") from September 1, 2005, to February 28, 2006, for the benefit of C.B. ("Child"), Buckler's alleged biological child, as required by a 2004 court judgment.

At the time Child was born, Mother told Buckler that he was the only person who could be the father of the child because she had not had sexual intercourse with anyone else during the time Child was conceived. Child was born in May of 2002. Buckler and Mother lived together until Child was approximately eighteen-months old, at which point they began living separately.

Subsequently, Mother filed a "Petition for Determination of Father-Child Relationship, Order of Child Custody, and Support" ("paternity action") against Buckler in 2004. Buckler was represented by legal counsel during the proceeding and sought joint custody of Child because he wanted to be a part of Child's life. At no time did Buckler deny that he was Child's father. He claims he did not contest this fact at the time of the hearing, because he believed Mother's claim that he was the biological father and was trying to protect his parental rights with Child. The circuit court issued its judgment on July 12, 2004, finding that Buckler was the biological father of Child and awarding Buckler and Mother joint legal and physical custody of Child. The court also ordered Buckler to pay child support in the amount of \$160 each month.

Buckler paid child support without issue until he understood that Child was not his biological child. He had a DNA test performed on Child in June of 2005 and the results determined that there was a zero percent chance that he was Child's father. Because Buckler discovered Child was not his, he stopped making child-support payments, even though he had the ability to do so. The State charged Buckler with criminal non-support because of his refusal to pay.

Prior to trial, the State filed a motion in limine to exclude the genetic testing results Buckler had obtained. The State argued that whether Buckler was truly Child's biological father was irrelevant, because according to the Missouri Supreme Court's interpretation of section 568.040, RSMo, in *State ex rel. Sanders v. Sauer*, 183 S.W.3d 238, 240 (Mo. banc 2006), the State need

only prove that the child had been "legitimated by legal process," not that the child was the accused's biological child. The State said that Child had been "legitimated by legal process" in the underlying paternity action where Buckler did not contest the paternity and signed Child's birth certificate. Buckler argued that he was lied to by Mother and that his acquiescence in the original paternity action was a result of fraud. The trial court sustained the State's motion excluding evidence of the DNA testing, after which Buckler waived his right to a jury trial.

At the bench trial, Buckler maintained that he did not contest being Child's father in the underlying paternity action because of Mother's lie that she had not had sexual activity with any other person, he admitted that he willingly participated in the paternity action and was not forced to accept being Child's father. Buckler's offer of the DNA paternity test into evidence was rejected upon the State's objection.

After all evidence was presented, the court overruled Buckler's motion for judgment of acquittal at the close of the evidence and found him guilty of the charged offense. Buckler was sentenced to one year and one month in the Department of Corrections ("DOC"), to run concurrently with an earlier sentence he was currently serving at that time. Buckler appeals.

AFFIRMED.

Division Three holds: *State ex rel. Sanders v. Sauer*, 183 S.W.3d 238, 240 (Mo. banc 2006), controls the disposition of this case. Therefore, the trial court had no choice but to deny admission of Buckler's DNA paternity test. Because the State needed to prove beyond a reasonable doubt only that Child had been "legitimated by legal process" in the underlying paternity action where Buckler did not contest paternity and signed Child's birth certificate, which it did, the court did not violate Buckler's due process rights in convicting him of criminal nonsupport. In addition, Buckler has an alternative way of seeking relief from his conviction. While Buckler has no relief in this appeal, he is an ideal candidate under section 210.854 to have his conviction set aside and all records concerning that conviction expunged by presenting new DNA evidence to the court.

Opinion by James M. Smart, Jr., Judge

October 18, 2011

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